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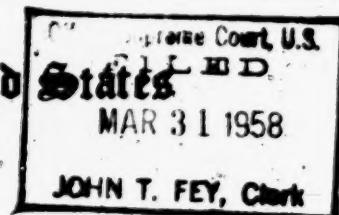
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SUPREME COURT, U.S.

No. 550

In the
Supreme Court of the United States

OCTOBER TERM, 1957



FREDDIE EUBANKS, PETITIONER

v.

STATE OF LOUISIANA

**Writ of Certiorari to the Supreme Court
of the State of Louisiana**

**ORIGINAL BRIEF ON BEHALF OF THE
STATE OF LOUISIANA**

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May it please the Court:

Opinion Below:

Record (pages 106-116) shows opinion of Supreme Court of Louisiana reported in 232 La. 289, 94 So 2d 262.

JURISDICTION

Statement in petitioner's brief is correct, your honors being invested with jurisdiction in accordance with 28 U.S.C. 1257(3).

QUESTION PRESENTED

In the selection of a Grand Jury consisting of 12 men, by a district judge of Louisiana from a list

(such list not identifying any persons thereon as to color or race) of 75 names drawn by a Jury Commission from a general venire of 750 names (the general venire being legally constituted without any racial discrimination) the 12 men so selected were of the white race and although the white men so selected were not included on account of their race or negroes were not excluded because of their race, does such selection because no negro was selected violate State or Federal Constitutional rights in the absence of proof that such selection was a purposeful, systematic exclusion of negroes solely on account of their race.

STATEMENT OF THE CASE

Facts related in petitioner's brief are correct.

SUMMARY OF ARGUMENT

This petitioner, a young negro male citizen of the State of Louisiana was convicted and sentenced to death for the murder of an elderly white female citizen of Louisiana committed during the commission of burglary, in violation of Article 30 of the Louisiana Criminal Code (R.S. 14:30).

Prosecutions for violations of criminal laws are instituted by affidavit, information or indictment, but in capital crimes none of our citizens, whether white or negro, shall be held to answer unless on a presentment or indictment by a Grand Jury (Const. of La. 1921—Article 1, Section 9).

The qualifications of a Grand or a Petit Juror are set forth in the Louisiana Revised Statutes of

1950, Title 15, Section 172. This section is verbatim Article 172 of the Code of Criminal Procedure of 1928 (Act 2 of 1928). Originally the statutory law of Louisiana (Act 110 of 1868, Sec. 3) contained a provision that selection be made without distinction as to race or color. This section and 18 Stat. 336 as amended, 18 U.S.C. 243 (which was passed 7 years after the Louisiana State) both provide there shall be no "distinction" (La. Statute) or "disqualification" (U. S. Statute) on account of race or color. In the Parish of Orleans the Jury Commission in accordance with LRS Title 15, Section 194 selects at large, impartially from citizens of the Parish of Orleans 750 qualified persons making a list thereof and place in the jury wheel on slips of paper showing thereon the name of the person, the number and the address corresponding to that on the list. This constitutes the general venire from which the names of prospective petit and grand jurymen are drawn. It is admitted no systematic inclusion or exclusion on account of race or color was practiced by the Jury Commission. From this jury wheel in accordance with LRS Title 15, Section 196 the Jury Commission draws 75 names preparing a list thereof which shows the name, the address, occupation and phone number of each person thereon and furnishes this list to the particular Judge of the Criminal District Court (which at the time of this indictment consisted of 6 sections each presided over by one Judge) who in rotation select a Grand Jury therefrom consisting of 12 citizens, who serve for a period of 6 months, with-

out compensation. As stated by petitioner in his brief it is not contended that this statute is unconstitutional but that the public officials, (i.e. the Judges of the Criminal District Court for the Parish of Orleans) who administer the statute "proscribe the negro race in Orleans from jury service." Petitioner then contends that it follows he has been denied the equal protection of the law. The same law applies in capital crimes to all persons whether the alleged perpetrator is white or negro. Neither the State nor a defendant is given any right of rejection of any grand jurymen.

The Constitution of the State of Louisiana (Article 1, Section 9) gives every person the right not to be held for a capital crime unless indicted by a Grand Jury. The Statute of the State of Louisiana which fixes the qualifications of such jurymen it is admitted is constitutional.

The State of Louisiana fixes the number of persons to constitute the grand jury (12) and in Orleans Parish requires the selection of 12 names by its judges from a drawing of 75 names. The persons so selected by the Judge may happen to be white, negro, quadroon, octaroon, griff, male or female or any particular nationality.

Basically in our opinion the complaint to this Court is that whereas six of the names on the Grand Jury list happened to be negroes, none of whom were chosen, and on previous grand jury panels no negroes were selected then it follows that such alleged prima facie case of negroes not having previously served have

ing been established, it is not rebuttable that Judge Echezabal did not purposefully systematically and intentionally exclude those names because they were negroes.

These laws are strictly procedural laws of the State of Louisiana. Its highest Court, the Supreme Court of Louisiana, has held in the instant case that such *prima facie* case has been rebutted and we submit great weight must be given its determination of the burden of proof and the weight of the evidence when your Honors make your determination.

ARGUMENT

It must be admitted by petitioner that neither the Constitution of Louisiana nor its law discriminate against the negro race by exclusion thereof from jury service. It must also be admitted no discrimination was practiced by the Jury Commission in the selection of the names present in the Jury wheel and no discrimination was practiced in the drawing of the names therefrom which were submitted to the Court for the selection to be made by the Court.

It is admitted that the law of Louisiana (R.S. 15, Section 172) does not violate any Federal or State Constitutional right.

If we understand petitioner correctly his whole contention is that because it was shown that no negroes had been previously selected for Grand Jury service by this Judge or other judges in New Orleans, racial or color exclusion has resulted by the use of the power to select which is vested in the judicial of-

ficer and that it must necessarily follow that a discrimination as to color must have been exercised in the drawing of the instant Grand Jury.

We respectfully submit that your honors are not required legally or morally in the instant case to reason from the probable to the actual, and find that the actual selection made by Judge Echezebal was evil or purposeful exclusion of negroes solely on account of their race.

It is not contended that the 12 Grand Jurymen selected in this case were not qualified or were biased or prejudiced against or for this negro or the negro race or that the men selected were not a cross section of the community. The whole gravamen of petitioner's complaint is simply that the Court in the exercise of its discretion did not place any negro on the Grand Jury, purposefully excluding persons solely on account of their color.

The question, therefore, in our opinion, is a question of judicial administration and exercise of judicial discretion, within the constitutional bounds.

In order to "select" a determination must be made by the district judge and to make a determination there must be an exercise of discretion. Our law requires that the judge must select 12 persons of well known good character and standing in the community out of 75 persons, regardless of race or color. No proof was offered that any of the judges abused their discretion and the burden of proof is upon the attacker of this jury's legality to overcome the legal presump-

tion that the Court discharged its duties properly. The attacker must show there has been a purposeful systematic and intentional discrimination by Judge Echezabél against negroes solely on account of their race which question must be determined by the facts in and evidence in this particular case.

Judge Echezabél's testimony (R. 90-94) follows:

"JUDGE FRANK T. ECHEZABAL, called as a witness on motion of the defense, when after first being duly sworn, testified as follows:

Direct examination.

By Mr. Garon:

- Q. Would you state your name for the record?
- A. Frank T. Echezabal, Judge of Section "D" of the Criminal District Court for the Parish of Orleans.
- Q. How long have you served as judge of the Criminal District Court of the Parish of Orleans?
- A. Since October 1921.
- Q. Without interruption?
- A. Uninterrupted. I have been re-elected each time.
This is my fourth term I am finishing now.
- Q. Since the beginning of your term of office, is it correct to say that before Section "F" was added to the Criminal District Court of the Parish of Orleans, that you selected a grand jury every two and a half years?
- A. Whether it happened every two and a half years or not I haven't computed it, but each time it became my turn to select a grand jury I have done so.

Q. Isn't it true it follows alphabetical order and true a grand jury serves each six months or two each year?

A. That's right. In one instance in my division I selected two grand juries in one year because I dismissed the first grand jury that I had selected for that year and then selected another.

Q. Have you ever selected a negro in any of your grand juries?

A. I have not.

(fol. 104) Q. Would you tell us Judge Echezabal, if you know of your own knowledge of any negro ever serving on a grand jury for the Parish of Orleans?

A. You mean my division?

Q. Any division, grand jury only.

A. Not my division. I could not state from personal knowledge.

Q. That's all I want, from personal knowledge.

A. I don't know sir, from personal knowledge.

Q. Would you tell us your method of selecting the 12 grand jurors that eventually serve on the grand jury?

A. Yes. I receive a list of 75 names which have been drawn, as I assume, lawfully out of the jury wheel by the Jury Commission of the Parish of Orleans, and I select 12 from that list.

Q. Do you send out letters or interview any of the 75 in advance of the selection?

A. Any?

Q. Any.

A. I will not say I have not interviewed any, but my method of selection is this generally. The lists I have received within the past several years contained data which is very informative and which I have considered very helpful in selecting a grand jury. The list, as I remember, contains the phone numbers of the prospective jurors, their occupations, the history of their service both as petty and as grand jurors, and from that list I select the 12. Many of those whom I select are known by me, if not personally, by reputation, and from that list I select my 12.

Q. In other words, you have at your disposal prior to selection or consider prior to selection, the names of prospective grand jurors, telephone numbers, residence, occupation and business they are employed in?

A. In many cases.

Q. It is frequently your policy to have chosen the 12 without interview?

(fol. 195) A. Yes. Generally, I would say that is correct, and may I add this: that the list makes no reference to race or religious creed.

Q. Would you state your age for the record?

A. Seventy-seven.

Q. And those seventy-seven years have been spent in the Parish of Orleans?

A. I was born in the City of New Orleans and I have never lived anywhere else.

Q. I take it you are generally familiar with the streets?

A. With the streets of the city?

Q. Yes, sir.

A. Fairly well, I would say.

Q. And the neighborhood?

A. You mean a particular neighborhood?

Q. Generally familiar.

A. I would say that.

Q. Getting to the selection of the grand jury that indicted this defendant, which was the Hartson grand jury which served from March 1, 1954, for a period of six months. Would you tell us Judge Echezabal, the manner of selecting those 12 gentlemen?

A. The same manner I selected all others as I have already stated.

Q. Did you interview any of those twelve?

A. Personally? Well, I can't recall whether I did or not.

Q. Do you know since 1936 negroes have been submitted to you on your venire list?

A. Well, I don't know for this reason. That on the day I select my grand jury, which is the first Monday of the month, the grand jury serves from the first Monday of one month to the first Monday of the ensuing six months, and on the same day I enroll my petty jury, and I cannot state which of the men and ladies standing in the courtroom have been summoned for petty jury service and grand jury service, but on all occasions I would say that there were (fol. 106) negroes in the courtroom and to repeat, whether there for or

summoned as grand jurors or petty jurors, sir, I don't know.

Q. But you are not positive, you don't know whether there were any negroes on the list of 75 in the last grand jury you selected.

A. I don't know, because as I have said, they come in and intermingle in the courtroom, probably 150 and sometimes less, have been summoned as petty jurors, and 75 on the grand jury, and sit indistinguishable in the courtroom. Whether negroes I have seen in my courtroom were summoned as grand jurors or petty jurors, I don't know.

Q. But I do understand from your testimony, you have not interviewed any negroes for the grand jury?

A. Nor white persons either. I may have one or two.

Q. But in this particular grand jury?

A. I can't say whether I did or not.

Q. No negroes?

A. No. But when I select them from my list I select those whom I believe are best qualified to serve on the grand jury and when I select them I don't know whether they are negroes or persons of the Caucasian race. I make no distinction sir. I would not exclude from my grand jury merely on account of race. I would not and I have never done it.

Q. Of the 12 you selected or the 12 you selected in the last grand jury, were men you knew about prior to selecting them?

A. Positively.

Q. Prior to impanelling them you knew a great deal about those gentlemen?

A. Yes.

Q. What was guiding you in checking as to qualification?

A. Good character, citizenship, availability and education to serve as grand jurors, because there are some men although they have a very good educational background, on account of temperament are not qualified to act either as petty or grand jurors.

(Fol. 107) Q. Do your minutes for March 1, 1954, reflect the manner of selecting the grand jury?

A. No, sir.

By Mr. Garon:

That's all."

Our Louisiana Constitution of 1921 and our laws are not innovations on this subject. The source of Article 1, Section 2 of our present Constitution of 1921 is Article 6 of our Constitution of 1879 which adopted in part the language of the 5th Amendment of the U. S. Constitution.

The source of Article 1, Section 9 of our Constitution is Article 5 of our Constitution of 1879.

Act 110 of 1868, Sec. 3 and U.S.C.A. Title 18, Section 243 passed in 1875 provide as to juries no exclusion of persons on account of race or color shall be made.

A review of the jurisprudence of the Louisiana Supreme Court and of the U. S. Supreme Court (your

Honors) cited in petitioner's brief we believe is that where over a period of years no negroes have been selected although available, a strong presumption is raised that such exclusion has been purposeful but an examination of the record—the factual situation—must be made in each case to determine this question of law. As shown by the cases cited in petitioner's brief our Louisiana Supreme Court has reversed our Louisiana district courts where after its examination of the factual situation in a particular case it has found that the evidence in the particular case did not overcome such a presumption. The cases in question as cited by petitioner are from parishes other than the Parish of Orleans where the Grand Jury was drawn from a general venire from which the Court found that the Jury Commission had excluded negroes from the general venire so that the drawing of the Grand Jury panel from such venire necessarily excluded the negro race from Grand as well as Petit Jury service.

As to the Parish of Orleans' Grand Jury system, only one case has previously been decided by our Supreme Court—*State v. Dorsey*, 207 La. 928, 954, 22 So. 2d 273, 281 in which the Louisiana Supreme Court held that the Judge had properly exercised and had not abused his discretion.

The Louisiana Supreme Court in this Eubanks case has upheld the selection made by Judge Echezebal and we sincerely submit its determination is entitled to great weight by your Honors. The personnel of our Supreme Court (consisting of seven members, one from each of our Supreme Court districts) com-

pares most favorably with any appellate court of any State or of the United States. It has zealously guarded the U. S. Constitutional rights of all defendants citing copiously from your Honors' decisions.

Petitioner's counsel, an outstanding, capable lawyer of the Parish of Orleans and formerly one of its assistant district attorneys, admits Judge Echezebal's integrity (with 38 years experience as a judge of the Criminal District Court Parish of Orleans) is unquestioned. In fact, this Judge has, whenever occasions required, acted as an associate justice ad hoc on the Louisiana Supreme Court bench.

In the Parish of Orleans we have entirely separate courts of criminal jurisdiction and separate courts of civil jurisdiction.

At the time this crime was committed the Criminal District Court of the Parish of Orleans consisted of six sections (divisions), designated as Sections A, B, C, D, E, F. The Grand Jury is selected for a term of six months by rotation according to the sections alphabetically. The Grand Jury which indicted Eubanks was selected by Judge Echezebal. Eubanks' case was allotted to Section F presided over by Judge Hertz in whose court the Jury found this defendant guilty of this atrocious murder, the motive being one of financial gain.

Each of these judges, therefore, were impanelling a Grand Jury once every three years. (These judges are all elected by the people for a term of 12 years)

All of our courts are cognizant of the fact that our New Orleans citizens are of different races, such as the white, the red, and the black. They are also cognizant of the fact that there has been an admixture of the races whose mixed ancestry have caused them to be denominated as quadroons, octaroons, and griffs. They are also cognizant of the fact that visual observation is (whether white or dark-skinned) not determinative of color. They are also cognizant of the fact that a person's name is also not indicative of his color or race or his nationality. Our Supreme Court is also cognizant of the ability of the judges of the Criminal District Court and of their general knowledge, their reputation, and their backgrounds prior to elevation to the Bench.

Each of these Judges who testified recited their method of selection of the Grand Jury. There is nothing in their testimony, in our opinion, which would warrant any conclusion that any one of these eminent jurists individually or collectively used any method to purposefully systematically include or exclude any person on account of race or color. In fact, petitioner's counsel in his brief page 29 states:

Whether the discrimination in Orleans Parish has been accomplished ingeniously or ingenuously is not an established fact."

Judge Echezabal's testimony clearly shows that no pattern or method was employed by him to discriminate against any person or class of persons.

He testified that the lists furnished do not identify

by color or race any of the individuals and he complied with the mandate of the legislature by picking 12 men known to him who had the required qualifications and were men of well known good character and outstanding residents of the community, which our law sets out as one of the requirements for jury service.

All the evidence in this case we respectfully submit is indicative of the fact that our judges in Orleans Parish have been and are selecting in accordance with all law competent Grand jurymen without paying attention to color, race or nationality.

Your Honors have consistently held the method of selection of a jury venire is within the purview of the individual states so long as the method does not exclude any person by reason of race or color or that the application of the method of selection by the administrative officers or the judiciary does not purposefully, systematically and intentionally exclude or include any person solely on account of race or color.

We quote in part from Your Honors majority opinion (Mr. Justice Murphy) in *Thiel v. Southern Pacific Co.*, 328 U. S. at Pages 220-221.

"The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. *Smith v. Texas*, 311 U. S. 128, 130; *Glasser v. United States*, 315 U. S. 60, 85. This does not mean, of course, that every jury must

contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.

The choice of the means by which unlawful distinctions and discriminations are to be avoided rests largely in the sound discretion of the trial courts and their officers. This discretion, of course, must be guided by pertinent statutory provisions."

The presumption of law is that our Orleans Parish judges perform their duties lawfully and do not abuse their discretion.

The evidence offered in this case in our opinion does not justify the defense counsel's contention that such evidence is proof of a purposeful, systematic and intentional exclusion or inclusion solely because of race or color. Again, we do not believe that the evidence in this case can be considered as proof to over-

come the presumption of law that this judge did do his full duty constitutionally in selecting this Grand Jury.

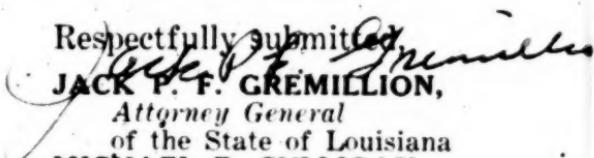
CONCLUSION

Whether there has been discrimination as to race or color in the selection of a Grand jury panel is a question of fact in every case.

To remand this case would require a determination by your Honors that the district judge in the instant case purposefully and intentionally excluded negroes from the Grand Jury panel solely because of their race and abused his discretion.

We respectfully submit there is no proof in this case to warrant such a determination and that the opinion of the Louisiana Supreme Court that no such exclusion took place and that there was no abuse of discretion must be given great weight and should not be disturbed.

The writ of certiorari heretofore granted and stay order issued should be recalled and petitioner's petition dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of this brief has
been served on Herbert J. Garon, Esq., Attorney for
petitioner herein by depositing the same in a United
States mail box, first class postage prepaid addressed
to Mr. Herbert J. Garon, Attorney at Law, 532
National Bank of Commerce Building, New Orleans,
Louisiana on 28th day of March, 1958.

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UNITED STATES STATUTES, 18 Stat. 336, 18
U.S.C. 243

Exclusion of jurors on account of race or color

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than \$5,000. June 25, 1948, c. 645, 62 Stat. 696.

LOUISIANA CONSTITUTION, Article 1, Section 2

Due process; expropriation of private property for public purposes; just compensation

Section 2. No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid.

LOUISIANA CONSTITUTION, Article 1, Section 9

Criminal prosecutions; speedy public trial; jury; venue; witnesses; counsel; indictment and information; double jeopardy

Section 9. In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury; provided, that cases in which the penalty is not necessarily imprisonment at hard labor, or death, shall be tried by the court without a jury or by a jury less than twelve in number, as provided elsewhere in this Constitution; provided further, that all trials shall take place in the parish in which the offense was committed, unless the venue be changed; provided further, that the Legislature may provide for the venue and prosecution of offenses committed within one hundred feet of the boundary line of a parish. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information; but the Legislature may provide for the prosecution of misdemeanors on affidavits; provided, that no person shall be held to answer for capital crime unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in actual service in time of war or public danger; nor shall any person be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial, or where there

a mistrial, or a motion in arrest of judgment is sustained.

UNITED STATES CONSTITUTION, Amendment
14, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LSA-R.S. 15:172

**PART XVIII. GRAND AND PETIT JURIES
SUB-PART A. QUALIFICATIONS FOR AND EX-
EMPTIONS FROM JURY SERVICE**

The qualifications to serve as a grand juror or a petit juror in any of the courts of this state shall be as follows:

To be a citizen of this state, not less than twenty-one years of age, a bona fide resident of the parish in and for which the court is holden, for one year next preceding such service, able to read and write the English language, not under interdiction or charged with any offense, or convicted at any time of any felony, provided that there shall be no distinction made on account of race, color or previous condition of servitude; and provided further, that the district judge shall have discretion to decide upon the competency of jurors in particular cases where from physical infirmity or from relationship, or other causes, the person may be, in the opinion of the judge, incompetent to sit upon the trial of any particular case.

In addition to the foregoing qualifications, jurors shall be persons of well known good character and standing in the community.

LSA-R.S. 15:192

Qualification of jurors; competency of jurors

The jury commissioners for the Parish of Orleans shall qualify all persons before their selection as jurors, but the judges of the several district courts shall have the right to decide upon the competency of jurors.

LSA-R.S. 15:194

Selection of jurors; preparation, preservation and supplementing of jury list

The said commissioners shall select at large, impartially, from the citizens of the Parish of Orleans having the qualifications requisite to register as voters, the names of not less than seven hundred and fifty persons competent under this Code to serve as jurors. A list of these names shall be prepared, certified to by the commissioners, and kept as a part of the records of their office subject to the orders of the judges of the criminal district court of said parish. The names on said list shall be copied on slips prepared for the purpose, with the number and address corresponding to that on the lists and shall be placed in the jury wheel from which the drawing is to be made. No name shall be canceled from said lists or withdrawn from the jury wheel without an order of court, and the said list shall be a correct and perfect record of the names in the jury wheel. The said list shall be supplemented from time to time as the necessities of jury service may require. No drawing shall be made from a list of less than seven hundred and fifty (750) names, unless in an extraordinary case when tales jurors are ordered by one of the judges of the criminal district court, said judge may, in his discretion, in order to avoid delay, order said drawings from a list and jury wheel containing not less than five hundred (500) names, and in such cases it shall be the duty of said commissioners immediate-

ly after said drawing to refill the said wheel and complete said list so as to reach the required number of seven hundred and fifty (750) names.

LSA-R.S. 15:196

Drawing of grand jury: impanelment

Not earlier than the fifteenth and not later than the twentieth day of February of each year, and not earlier than the fifteenth and not later than the twentieth day of August of each year, the said commissioners shall draw from the said wheel the names of not less than seventy-five persons, which said names, upon a day next following said drawing, not a Sunday or a legal holiday or a legal half-holiday, shall be submitted by said commissioners to the presiding judge of that section of the criminal district court whose turn it shall happen then to be, to impanel the incoming grand jury; and said judge, from the names thus submitted, shall select twelve persons who shall constitute the grand jury for the Parish of Orleans for the grand jury term next ensuing. Each judge of the criminal district court shall, in rotation, select the grand jury for the Parish of Orleans. The order of sequence among the judges in the selection of the grand jury prevailing at the time this article goes into effect shall be preserved and continued. The judge of the section of the criminal district court who shall have appointed said grand jury shall have control and instruction over the grand jury, exclusive of all other judges of the criminal district court, and such grand jury shall make all findings and returns in open court to said judge; and in addition thereto, may make reports and requests in open court as provided by law, provided that if the judge to whom the

control of the grand jury shall belong shall not be from any cause in the actual discharge of his duties as judge, the judges of the criminal district court then present shall designate some other judge to impanel and instruct said grand jury, or to receive its returns and findings, as the case may be, and the judge so designated shall continue to act for the judge to whom the control of such grand jury shall belong until said last-mentioned judge shall return to the discharge of duties; provided, further, that the grand jury in office at the time of the adoption of this Code shall, until the expiration of that term of office, be under the control of the presiding judge of the section by whom it was selected and shall return all indictments and findings to said judge in open court.